

1 **ALAN G. DOWLING, ESQ.** (Cal. SBN 70686)  
Email address: [agdownling@aol.com](mailto:agdownling@aol.com)  
2 **LAW OFFICES OF ALAN G. DOWLING**  
1043 Pacific St., No. 1  
3 Santa Monica, California 90405  
4 Telephone (cell): 818-679-6395  
Fax: 424-238-5366  
5 *Attorneys for Plaintiffs*  
6 *Alan G. Niven and Heather Vincent-Niven*

7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **ALAN G. NIVEN and**  
11 **HEATHER VINCENT-NIVEN,**

12 Plaintiffs,

13 vs.

14 **UNIVERSAL MUSIC GROUP, INC.,** a  
15 Delaware corporation, doing business as  
Capitol Records Group,  
16 **UMG RECORDINGS, INC.,** a Delaware  
corporation, and  
17 **DOES 1 through 10, inclusive,**  
18 Defendants.

**Case No. 2:23-cv-7917**

Hon. \_\_\_\_\_,  
United States District Judge

**COMPLAINT FOR INTENTIONAL  
MISREPRESENTATION AND  
CONCEALMENT, NEGLIGENT  
MISREPRESENTATION, BREACH OF  
WRITTEN CONTRACT, CONVERSION,  
DECLARATORY RELIEF, ACCOUNTING,  
AND IMPOSITION OF CONSTRUCTIVE  
TRUST**

**REQUEST FOR TRIAL BY JURY**

**COMPLAINT**

Plaintiffs ALAN G. NIVEN and HEATHER VINCENT-NIVEN, individuals, for their Complaint herein, allege:

**JURISDICTION AND VENUE**

1. Jurisdiction lies in this Court under 28 U.S.C. Section 1332 (a) and (c), based on diversity of citizenship because Plaintiffs are individuals each residing in the State of Arizona while, on information and belief, the named business entity defendants are corporations organized under the laws of the State of Delaware but qualified to do and doing business in the County of Los Angeles, State of California, and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.

2. Venue lies within this Court under 28 U.S.C. Sections 1391(a) and (b), in that the named business entity defendants each do business and are subject to personal jurisdiction in the Central District of California, and a substantial part of the events or omissions on which Plaintiffs' claims are based occurred in the Central District of California.

**IDENTIFICATION OF PARTIES**

3. Plaintiff ALAN G. NIVEN ("Alan Niven") is an individual residing in the State of Arizona.

4. Plaintiff HEATHER VINCENT-NIVEN ("Heather Niven") is an individual residing in the State of Arizona.

5. Plaintiffs are husband and wife.

6. On information and belief, at all times relevant hereto Defendant UNIVERSAL MUSIC GROUP, INC. ("UMG Inc."), has been and is a corporation organized and existing under the laws of the State of Delaware, has maintained its principal place of business in the County of Los Angeles, State of California, and has engaged in business in the Central District of California, besides doing business elsewhere throughout the United States and around the world, including at various times under the fictitious business name of Capitol Records Group. On further information and belief, since 2012 UMG Inc. has been and is the successor in interest to certain pre-existing business entities including Capitol Records, Inc., Capitol Records, LLC, and EMI with regard to various assets, rights and/or contracts to which this action pertains.

7. On information and belief, at all times relevant hereto Defendant UMG RECORDINGS, INC. ("UMG Recordings"), has been and is a corporation organized and existing under the laws of the State of Delaware, has maintained its principal place of business in the County of Los Angeles, State of California, and has engaged in business in the Central District of

1 California, besides doing business elsewhere throughout the United States and around the world.  
 2 On further information and belief, at all times relevant hereto UMG Recordings has been and is the  
 3 successor in interest to certain pre-existing business entities including Capitol Records, Inc.,  
 4 Capitol Records, LLC, and EMI with regard to various assets, rights and/or contracts to which this  
 action pertains.

5 8. Plaintiffs are unaware of the true names and capacities of the Defendants sued as  
 6 DOES 1 through 10. Plaintiffs will seek leave of Court to amend this Complaint to allege the true  
 7 names and capacities of the DOE Defendants as the same become known. Plaintiffs are informed  
 8 and believes and thereon allege that each of the DOE defendants was responsible with the named  
 9 Defendants for each act or omission herein alleged.

10 9. Plaintiffs are informed and believe and thereon allege that, in doing the acts  
 11 complained of herein, Defendants were each the agent, joint venturer, servant, employee, and/or  
 12 representative of each other Defendant and were each acting within the scope of the agency,  
 13 employment, and representation, with the advance knowledge, acquiescence or subsequent  
 14 ratification of every remaining Defendant; Defendants agreed together to perform the acts  
 15 complained of herein; and each Defendant is responsible and liable to Plaintiffs for all damages  
 16 herein claimed, as and to the extent that such damages resulted from the actions of the Defendant  
 itself.

17 10. Defendants UMG Inc. and UMG Recordings, along with DOES 1 through 10, are  
 18 hereinafter sometimes referred to collectively as “Defendants.”

#### 19 ALLEGATIONS COMMON TO ALL CLAIMS

20 11. Over the last four decades, Plaintiff Alan Niven has been a renowned musical artist’s  
 21 manager, record producer and songwriter, representing, working with and contributing to the  
 22 success of several of the most revered and renowned musical artists in rock music, most prominent  
 23 among them the bands Guns N’ Roses and Great White, but also working with artists such as  
 Motley Crue, Berlin, Dokken and Clarence Clemons, among others.

24 12. In 1986, Alan Niven founded a company called Stravinski Brothers Productions,  
 25 through which to conduct his business affairs. Mr. Niven incorporated his company as Stravinski  
 26 Brothers Productions, Inc., a California corporation, in March 1986. He continued to do business  
 27 through that corporate entity until it was formally dissolved and terminated, effective December 1,  
 28 1994. In connection with that dissolution and termination, he had the corporation assign to himself,  
 as an individual, all rights, title and interest in the corporation’s assets of any kind or nature  
 whatsoever, owned, held or used in the conduct of the business of the corporation, including among

1 other things accounts receivable and contractual rights (including without limitation rights to  
 2 royalties and to receive accountings, and to assert legal claims, rights of action, causes of action,  
 3 and to assert rights or seek remedies as against third parties). Following dissolution and terminatin  
 4 of the corporation, Mr. Niven carried on conducting his business as a sole proprietorship, under the  
 5 name Stravinski Brothers Productions (sometimes shortened to Stravinski Brothers). As regards  
 6 the accountings which are at the heart of this action, Defendants (and their predecessors in interest)  
 7 have, at all times since 1994, dealt directly with Alan Niven individually doing business as  
 8 Stravinski Brothers Productions, rendering accountings, correspondence and royalty payments to  
 him as such.

9 13. Great White is a rock band formed in Los Angeles in 1977. The band was especially  
 10 successful from the mid-1980s through the early 1990s. Great White has continued to perform,  
 11 with one lineup or another, off and on ever since then. Over the course of its career, it has sold  
 more than 8 million records worldwide.

12 14. In addition to its debut studio album “Great White” (released in 1984) and its second  
 13 album “Shot in the Dark” (released in 1986), Great White’s most successful albums included “Once  
 14 Bitten” (released in 1987, recipient of RIAA Platinum Album and CRIA gold record awards),  
 15 “...Twice Shy” (released in 1989, recipient of RIAA Gold, Platinum and Multi-Platinum Album  
 16 and CRIA Gold and Multi-Platinum Album awards), “Hooked” (released in 1991, recipient of  
 17 RIAA Gold Album and CRIA Gold Album awards), and “Psycho City” (released in 1992). All  
 18 those albums were released by Capitol Records, except the first, which was released by Capitol’s  
 affiliate EMI North America).<sup>1</sup>

19 15. The biggest singles released by Great White included “Face the Day” (released in  
 20 1986), “Rock Me,” “Save Your Love” and “Lady Red Light” (all released in 1987), “Mista Bone,”  
 21 “Once Bitten, Twice Shy” (recipient of RIAA Gold Record award), “The Angel Song,” “House of  
 22 Broken Love” and “Call It Rock & Roll” (all released in 1989), “Desert Moon” (released in 1991),  
 23 “Big Goodbye” and “Old Rose Motel” (both released in 1992), “Sail Away” (released in 1994),  
 and “Rollin’ Stoned” (released in 1999).

24 16. No less than 17 compilation and “greatest hits” albums have been released by Great  
 25 White, the first of which was “The Best of Great White, 1986-1992” (released by Capitol Records  
 26

27 <sup>1</sup> The minimum certified sale qualifications for these awards are: RIAA (Recording Industry  
 28 Association of America)—500,000 U.S. sales for “Gold,” 1,000,000 U.S. sales for “Platinum,” and  
 2,000,000 or more U.S. sales for “Multi-Platinum”; and CRIA (Music Canada)—40,000 Canadian  
 sales for “Gold,” 80,000 Canadian sales for “Platinum,” and 160,000 or more Canadian sales for  
 “Multi-Platinum.”

1 in 1993, recipient of RIAA Gold Album award). (Others released by Capitol Records and/or its  
2 affiliate EMI included “The Best of Great White” (released in 2000), “Rock Champions” (released  
3 in 2000), and “Greatest Hits” (released in 2001). Additionally, ten “live” albums have been  
4 released by Great White over the years, five of them by 1995.

5 17. During the heyday of MTV in the 1980s and early 1990s, Great White also released  
6 19 music videos, all but one of them by 1994. Fifteen of those were released between 1986 and  
7 1992, while Great White was signed to Capitol Records. (One other was by a later iteration of the  
8 band in 2012.)

9 18. In 1982, the band contracted with Plaintiff Alan Niven to serve as the band’s  
10 manager, which he did throughout the period 1982 through 1995. Mr. Niven co-produced all but  
11 the first of Great White’s albums released through 1995, wrote or co-wrote many of their songs,  
12 and performed as an occasional vocalist, sideman musician and arranger. All the albums and the  
13 singles released by the band while managed by Mr. Niven were released by Capitol Records.

14 19. Most significantly for purposes of this action, in 1986 Great White also signed a  
15 contract with Stravinski Brothers Productions, Inc., for Stravinski to serve as the band’s record  
16 label. After the band began working with Alan Niven in Summer 1986, Stravinski Brothers  
17 Productions, Inc. managed to obtain, negotiate and execute a recording contract with Capitol  
18 Records, Inc. for Great White’s services, effectively assigning to Capitol Records various of  
19 Stravinski’s rights under its recording contract with the band. That agreement between Stravinski  
20 Brothers Productions, Inc. and Capitol Records, Inc. (Capitol Contract No. 7094), is dated June 23,  
21 1986, and referred to herein as the “1986 Great White Agreement.” Pursuant thereto Defendants  
22 are (and their predecessors in interest were) obligated to collect and account to Stravinski on a semi-  
23 annual basis for all income from the exploitation and sale of Great White audio and video  
24 recordings. (After Stravinski Brothers Productions, Inc. was dissolved in 1994, that obligation  
25 became owed to its assignee, Alan Niven, individually.) The 1986 Great White Agreement  
26 included, among other things, detailed provisions governing the parties’ recording activities;  
27 formulae for calculation of royalties based on revenues from sales and exploitation of Great White  
28 audio and visual recordings and requirements as to Capitol’s accounting therefor; provisions for  
payment of (and later recoupment of) advances from Capitol to Stravinski including for production  
costs relating to music and video recordings; and audit rights with regard to accounting statements.

20. At no time in or since 1986 did Stravinski Brothers Productions, Inc. or either of  
Plaintiffs authorize the payment or incurring by Capitol Records, Inc. or any of its successors in  
interest, of any advances or production costs relating to Great White music videos that were not

1 fully repaid or recouped long ago. Indeed, Plaintiffs are informed and believe, and on that basis  
 2 allege, that all production costs and advances relating to music videos produced under or pursuant  
 3 to the 1986 Great White Agreement were fully repaid to or recouped by Defendants' predecessors  
 4 in interest prior to the year 2000.

5 21. Even though Defendants and their predecessors in interest have rendered  
 6 purportedly comprehensive semi-annual accountings relating to Great White income and expenses  
 7 each year in and since 1986 under and pursuant to the 1986 Great White Agreement, at no time  
 8 from 1986 to January 2018 did Defendants or any of their predecessors advise Stravinski or Alan  
 9 Niven of the existence of any account (or account number) pertaining to or reflecting the existence  
 10 or amount of any production costs or advances relating specifically to Great White music videos  
 11 and that are still, at present, allegedly unrecouped.

12 22. Prior to March 2018, Plaintiffs had no reason, arising from or relating to any  
 13 previous accountings rendered to Alan Niven by Plaintiffs or their predecessors relating to the 1986  
 14 Great White Agreement, to question the accuracy or veracity of those accountings. Consequently,  
 15 Plaintiffs never previously undertook the expense and inconvenience of an audit of Defendants' or  
 16 their predecessors' accounting books and records.

17 23. At no time in or after 1986 did Stravinski Brothers Productions, Inc. or either of  
 18 Plaintiffs authorize the payment of any sum whatsoever, by Capitol Records, Inc. or any of its  
 19 successors in interest, to Gunilla Larsson Niven or to any other third party at her request or  
 20 direction, much less authorize or agree to have any such payment ever to be repaid or recoupable  
 21 in whole or in part from any royalties due under the 1986 Great White Agreement; neither, in or  
 22 since 1986, has Alan Niven ever consented to or ratified any such payment.

23 24. At no time has any accounting from Defendants or their predecessors in interest ever  
 24 acknowledged or identified any payment made by them to Gunilla Larsson Niven or any other third  
 25 party at her request or direction, much less assert that any such payment was expected to be repaid  
 26 or recoupable in whole or in part from any royalties due under the 1986 Great White Agreement.

27 25. In early March 2018, Plaintiff Alan Niven received from Defendants a one-item  
 28 accounting (separate and apart from any regular semi-annual accountings) relating to Great White.  
 That accounting, entitled "Artist Royalty Summary for Period 12/31/17," referenced an account  
 number \*\*\*\*6561 that had never been seen before by Plaintiffs and had never been included in any  
 of the prior accountings, and purported to reflect a deficit owed to Defendants by Alan Niven in  
 the amount of \$981,137.29. Plaintiffs had no clue what this pertained to. That accounting, on its  
 face and implicitly, purported to be true and accurate; represented as fact that some \$981,137.29 in



1 debt had been incurred by Defendants and/or their predecessors relating to Great White; represented  
 2 that said sum was properly accountable under the terms of the 1986 Great White Agreement; and  
 3 represented that under the 1986 Great White Agreement Defendants were and would continue to  
 4 be entitled to recoup that amount from any future royalties otherwise payable to Plaintiffs.

5 26. Plaintiffs thereafter contacted Defendants, seeking an explanation. In  
 6 communications with UMG's employees John Ray and Jeff McGowan (and possibly others)  
 7 Plaintiffs were informed that this was an account that related to "unrecouped Great White video  
 8 expenses." (The February 28, 2018, accounting is therefore referred to hereinafter as the "February  
 9 28 GW Video Accounting".) However, over the course of multiple conversations over several  
 10 months, in which UMG employees suggested they had no personal knowledge of the matter but  
 11 assured Plaintiffs that they would look into it, no substantive additional information was  
 12 forthcoming. Unable to make any progress in resolving this, Plaintiffs retained an attorney to  
 13 approach UMG on their behalf. Over many months, Plaintiffs' attorney communicated with UMG  
 14 employees and was likewise repeatedly assured that UMG wanted to resolve the matter amicably,  
 15 were looking into the situation, and would obtain and provide an explanation and documentation  
 16 to explain and justify the accounting entry relating to the purported unrecouped Great White video  
 17 expenses. Notwithstanding their promises and assurances, they failed to provide that information.

18 27. In the midst of those attempts to get an explanation, in or about early 2020 Plaintiff  
 19 Alan Niven coincidentally received, out of the blue, information from one of his children to the  
 20 effect that, reportedly, his ex-wife Gunilla Larsson Niven had approached Defendants' predecessor  
 21 in interest in or about 2004, and managed to get the record company to pay her something in the  
 22 range of \$1 million, on what basis and under what terms of agreement Plaintiffs still have been  
 23 unable to ascertain. Both Gunilla Larsson Niven and the record company (Plaintiffs and their  
 24 predecessors) concealed from Plaintiffs the very fact of that payment, its rationale, its specific  
 25 amount and the terms of any agreement they may have made relating thereto, and under what  
 26 authority it was ever made (much less why it has been associated with Plaintiff Alan Niven or Great  
 27 White at all), and neither Gunilla Larsson Niven nor the record company has ever even  
 28 acknowledged or explained any of that, to date.

29 28. Having gotten nowhere attempting amicably to get any explanation from  
 30 Defendants regarding the February 28, 2018 GW Video Accounting, and likewise unable to get  
 31 any information or acknowledgement from Gunilla Larsson Niven or Defendants regarding the  
 32 purported payment made to her around 2004, Alan Niven had attorneys proceed to initiate two  
 33 lawsuits, one of them in Los Angeles Superior Court against Universal Music Group, Inc., and

1 another in Superior Court in Arizona against Gunilla Larsson Niven.

2 29. The Los Angeles Superior Court action was filed March 1, 2021, and served upon  
3 Defendants. Forthwith, Defendants contacted Plaintiffs' attorney, expressing a desire to avoid  
4 litigation and again promising to investigate, report back with an explanation, and obtain whatever  
5 documentation they could, justifying the accounting entry. After some discussion, Defendants  
6 induced Plaintiffs' counsel to enter into a tolling agreement. The Tolling Agreement was entered  
7 between Alan Niven and Universal Music Group, Inc. dba Capitol Records on April 29, 2021, and  
8 provided that, in return for Plaintiffs dismissing the Los Angeles litigation without prejudice  
9 forthwith (which they did), any applicable statute of limitations would toll until at least April 1,  
10 2022, while Defendants conducted their investigation. Despite that Tolling Agreement and those  
11 assurances, and the passing of yet another year, and Plaintiffs were still unable to obtain further  
12 information, explanation or any documentation from Defendants relating to (much less justifying)  
the disputed accounting entry. Defendants continued to induce Plaintiffs to refrain from litigating,  
while also continuing to stonewall Plaintiffs and keep them in the dark.

13 30. Plaintiffs' continuing efforts to obtain further information or explanation concerning  
14 the February 28 GW Video Accounting or the undisclosed 2004 reported payment to Gunilla  
15 Larsson Niven have been to no avail, leaving Plaintiffs no alternative but to re-institute this action  
16 and actively pursue their claims, resorting to the force of law and, if necessary, court orders to  
17 obtain and examine all pertinent information, accounting books, records and files, and related  
18 documentary evidence. Moreover, given the anomaly of the mystery posed by the February 28 GW  
19 Video Accounting, Defendants' failure to provide, after many months of patient inquiry, any  
20 reasonable explanation, justification or documentation for the disputed accounting entry (instead  
21 resorting to increasingly evident stonewalling), and also the previously-undisclosed and improper  
22 payment around 2004 to Gunilla Larsson Niven, legitimate questions have arisen concerning the  
23 accuracy of potentially all accountings rendered by Defendants and their predecessors under or  
24 relating to the 1986 Great White Agreement, from its inception. There is also reason to believe that  
25 the amount alleged to reflect unrecouped advances to Great White for product of other video-related  
26 expenses or advances as reflected in the February 28 GW Video Accounting may actually be related  
27 to with the reported 2004 advance to Gunilla Larsson Niven, and in effect represents Defendants'  
28 attempt to claw back that amount out of the pockets of Plaintiffs by wrongfully depriving them of  
future (and perhaps unpaid past) royalties even though Plaintiffs had nothing to do with Defendants'  
payment to Gunilla Larsson Niven.

31. As a result of the events and circumstances described above, Plaintiffs by this



Complaint seek, along with other compensatory and punitive relief, a comprehensive court-ordered accounting, and also hereby notify Defendants of Plaintiff's demand to conduct a contractual audit pursuant to Paragraph 8 of the 1986 Great White Agreement, in each instance examining all of Defendants' and their predecessors' books and records relating to all Great White-related accountings from the inception of the 1986 Great White Agreement to the present (in particular, but without limitation, with respect to the subject matter of and facts underlying the February 28 GW Video Accounting and the reported 2004 payment to Gunilla Larsson Niven).

### FIRST CLAIM FOR RELIEF

(For Intentional Misrepresentation-

By Plaintiffs Against All Defendants)

32. Plaintiffs reallege and incorporate herein by reference, as if set forth at length, every allegation contained in Paragraphs 1 through 31, inclusive, hereinabove.

33. Defendants represented to Plaintiffs that certain facts were true, as set forth in detail hereinabove.

34. Defendants' representations pertaining to the February 28 GW Video Accounting, its truthfulness and accuracy, and Defendants' claims of entitlement to recoupment embodied and communicated therein, and in semi-annual accountings and other communications to Plaintiffs since then, were false. Likewise false were Defendants' employees' repeated assurances that they would investigate the matter of that accounting, provide Plaintiffs with an explanation and justification for its assertions, and provide documentation evidencing what it pertained to.

35. Defendants knew that the representations were false when Defendants made them, and/or they made the representations recklessly and without regard for their truth.

36. Resorting to "hide the ball" and "stonewall" tactics, Defendants intended that Plaintiffs rely on the representations, and hoped thereby to disincentivize Plaintiffs from pursuing their inquiry as to these disputed matters, avoid the expense and burdens of actual litigation, and hope that Plaintiffs would eventually give up and simply walk away in frustration, despite the lack of any resolution.

37. From March 2018 through at least April 2, 2022, Plaintiffs reasonably and justifiably relied on Defendants' repeated representations and promises.

38. As a direct and proximate result of Defendants' intentional misrepresentations and Plaintiffs' reasonable reliance thereon, Plaintiffs have been damaged in an amount as yet unascertained but which Plaintiffs are informed and believe exceeds \$981,137.29, and Plaintiffs will seek leave to set forth herein the correct sum by amendment when it has been ascertained.

39. In doing the acts alleged, Defendants each acted willfully, fraudulently, maliciously, oppressively and with intent to injure Plaintiffs, and with intentional and/or reckless disregard for the rights and interests of Plaintiffs, as a result of which Plaintiffs are entitled to punitive and exemplary damages against Defendants and each of them in such amount as the proof at trial may indicate is appropriate.

## SECOND CLAIM FOR RELIEF

(For Concealment-

By Plaintiffs Against All Defendants)

40. Plaintiffs reallege and incorporate herein by reference, as if set forth at length, every allegation contained in Paragraphs 1 through 31, inclusive, hereinabove.

41. Defendants were required by written contract to timely and accurately account to Plaintiffs for, and pay to Plaintiffs, certain revenues earned under and pursuant to the 1986 Great White Agreement. Nevertheless, Defendants disclosed some facts to Plaintiffs but intentionally failed to disclose other material facts, making the disclosures that were made deceptive; intentionally failed to disclose certain material facts that were known only to Defendants and that Plaintiffs could not have independently discovered; and prevented Plaintiffs from discovering facts pertinent to Plaintiff's rights and entitlements under the 1986 Great White Agreement.

42. Plaintiffs did not know of the concealed facts.

43. Defendants concealed the facts with intent to defraud and deceive Plaintiffs.

44. Had the omitted information been disclosed, Plaintiffs reasonably would have behaved differently, including without limitation taking steps to attempt to ascertain the true facts, protect and preserve their rights, and to prevent such eventualities from occurring.

45. As a direct and proximate result of Defendants' concealment, Plaintiffs has been damaged in an amount as yet unascertained but which they are informed and believe exceeds \$981,137.29, and Plaintiffs will seek leave to set forth herein the correct sum by amendment when it has been ascertained.

46. In doing the acts alleged, Defendants each acted willfully, fraudulently, maliciously, oppressively and with intent to injure Plaintiffs, and with intentional and/or reckless disregard for the rights and interests of Plaintiffs, as a result of which Plaintiffs are entitled to punitive and exemplary damages against Defendants and each of them in such amount as the proof at trial may indicate is appropriate.

///

THIRD CLAIM FOR RELIEF

(For Negligent Misrepresentation-  
By Plaintiffs Against All Defendants)

47. Plaintiffs reallege and incorporate herein by reference, as if set forth at length, every allegation contained in Paragraphs 1 through 31, inclusive, hereinabove.

48. Defendants represented to Plaintiffs that certain facts were true, as set forth in detail hereinabove.

49. Defendants' representations were false.

50. When Defendants misrepresented these facts to Plaintiffs, even if Defendants may have honestly believed their representations to be true, Defendants did so having no adequate or reasonable basis in knowledge or information as to the true facts to know or reasonably believe their own representations to be true, even though with the exercise of reasonable diligence they could have determined such knowledge or information as to the true facts before making any such representations to Plaintiffs.

51. Defendants intended that Plaintiffs rely on these representations.

52. Plaintiffs reasonably relied on Defendants' representations.

53. As a direct and proximate result of Defendants' negligent misrepresentations, Plaintiffs have been damaged in an amount as yet unascertained but which they are informed and believe exceeds \$981,137.29, and Plaintiffs will seek leave to set forth herein the correct sum by amendment when it has been ascertained.

FOURTH CLAIM FOR RELIEF

(For Breach of Written Contract-  
By Plaintiffs Against All Defendants)

54. Plaintiffs reallege and incorporate herein by reference, as if set forth at length, every allegation contained in Paragraphs 1 through 31 inclusive, hereinabove.

55. Plaintiff and Defendants entered into, and are subject to the terms and conditions of, a written contract (the 1986 Great White Agreement, as described hereinabove).

56. At a date uncertain after February 28, 2018, but prior to September 24, 2021, the parties to the 1986 Great White Agreement further agreed to, and Defendants acted upon, an amendment or modification of the 1986 Great White Agreement whereby Defendants would split the amount accounted for and stated by them in UMG Account No. \*\*\*\*\*6561 into two equal portions allocable fifty percent (50%) each to Plaintiff Alan Niven and Plaintiff Heather Niven, respectively (instead of Alan Niven alone, as had theretofore been the case commencing February

28, 2018). Pursuant to such amendment, UMG Account No. \*\*\*\*6561, at all pertinent times, reflected a massive purported deficit (a debt purportedly payable by each of the Plaintiffs to Defendants, recoupable from certain Great White revenues that would otherwise be payable to the Plaintiffs). If such actions by Defendants are for any reason not characterized as an amendment or modification, then such change in the accounting constituted an implied-in-fact contract based on the conduct and relationship of the parties, engaged in and implemented intentionally by Defendants and with knowledge, or reason to know, that Plaintiffs would interpret such conduct as an agreement to treat the manner of such accounting under that written contract as having been thus changed, and would be personally affected thereby. Heather Niven thereupon became a party, or at least a real party in interest, with respect to the 1986 Great White Agreement, as thus amended or modified.

57. Plaintiffs have performed all, or substantially all, of the significant conditions, covenants and promises required on Plaintiffs' part to be performed under the terms of the 1986 Great White Agreement, except as excused or prevented from doing so by the conduct of Defendants.

58. Defendants failed to do things that the contract (as amended) required them to do as regards the rendering of Great White accountings, all as more fully set forth in detail hereinabove; to wit, Defendants failed to render timely and accurate accountings and to make timely payment in full of royalties due.

59. As and to the extent Defendants in or around 2004 paid a sum in the range of \$1 million to Alan Niven's ex-wife Gunilla Larsson Niven (or per her directions, without the knowledge, consent or ratification of Alan Niven) and purported to designate that payment as being related in any manner whatsoever to Great White or Alan Niven, Defendants acted in a manner prohibited by the 1986 Great White Agreement.

60. In every contract or agreement there is an implied promise of good faith and fair dealing. This means that each party will do nothing to unfairly interfere with the right of any other party to receive the benefits of the contract, including without limitation the right to receive timely accountings and payment of royalties due.

61. Defendants violated the duty to act fairly and in good faith.

62. Defendants unfairly interfered with Plaintiffs' right to receive the benefits of the contract.

63. As a direct and proximate result of Defendants' breach of the agreement, Plaintiff has been damaged in an amount unascertained but which it is informed and believes exceeds

1 \$981,137.29, and Plaintiff will seek leave to set forth herein the correct sum by amendment when  
2 it has been ascertained.

3 64. This claim is pled in part in the alternative, in so far as Plaintiffs have also set forth  
4 herein their claims for intentional misrepresentation and concealment, and this claim sounding in  
5 negligence is neither intended to, nor shall it be deemed to, prejudice, limit, alter or waive their said  
6 claim for intentional torts, should they prevail thereon.

7 FIFTH CLAIM FOR RELIEF

8 (For Conversion-

9 By Plaintiffs Against All Defendants)

10 65. Plaintiffs incorporate herein by reference as if set forth at length each and every  
11 allegation contained in Paragraphs 1 through 31 inclusive, hereinabove.

12 66. Based on the afore-described facts, events, acts and omissions Defendants and  
13 each of them have wrongfully converted the property of Plaintiffs for their own use and  
14 commercial exploitation. Such property includes without limitation all monies in the possession  
15 of Defendants which they received as income or revenues pursuant to the 1986 Great White  
16 Agreement and which would have been due and payable as royalties to either or both of Plaintiffs,  
17 but which were not timely or accurately accounted for and paid. For example, but without  
18 limitation, Defendants falsely asserted (by means of UMG Account No. \*\*\*\*6561) that sums  
19 certain were subject to recoupment by Defendants as alleged costs, expenses and deficits relating  
20 to Great White videos, and Plaintiffs are informed and believe that, on the basis of that pretext,  
21 monies owed to Plaintiffs were wrongfully withheld by Defendants, commingled with their own  
22 monies, and have since been used for Defendants' own purposes. Defendants have thus  
23 substantially interfered with Plaintiffs' property by knowingly and willfully engaging in such acts  
24 without Plaintiffs' consent, and have exercised ownership over such sums and prevented  
25 Plaintiffs from recovering such sums.

26 67. Defendants have failed to cease wrongfully using and converting the property of  
27 Plaintiffs despite demand that they do so.

28 68. As a direct and proximate result of Defendants' conduct, Plaintiffs have sustained,  
and will continue to sustain, substantial injury, loss and damages, the exact amounts of which  
Plaintiffs have not as yet been able to ascertain, although Plaintiffs are informed and believe and  
thereon allege exceed the sum \$981,137.29, exclusive of interest and costs. Plaintiffs will seek  
leave of Court to amend this Complaint to allege the exact amount of such damage if, when and to  
the extent such amount can be ascertained.

69. In engaging in the conduct of which Plaintiffs complain herein, Defendants and each of them have acted with oppression, fraud and malice, with the intent to cause injury to Plaintiffs and/or in reckless disregard of the rights and interests of Plaintiffs, and Plaintiffs are consequently entitled to an award of punitive and exemplary damages against Defendants and each of them, in an amount to be determined by the trier of fact, and all according to proof.

70. The harm these wrongful acts will cause to Plaintiffs is both imminent and irreparable, and the amount of damage sustained by Plaintiffs will be difficult to ascertain if these acts continue. Plaintiffs have no adequate remedy at law. Accordingly, Plaintiffs are also entitled to an injunction restraining Defendants, their officers, directors, agents, employees, and all persons acting with, under, for or in concert with them from engaging in further such unlawful conduct, and specifically prohibiting Defendants from asserting any claim of entitlement to recoupment for alleged costs, expenses or deficits relating to any Great White music videos produced prior to the year 2000.

#### SIXTH CLAIM FOR RELIEF

(For Declaratory Relief-

By Plaintiffs Against All Defendants)

71. Plaintiffs reallege and incorporate herein by reference, as if set forth at length, every allegation contained in Paragraphs 1 through 39, inclusive, hereinabove.

72. Plaintiffs contend:

A. All advances, production costs and other expenses ever incurred by Defendants or their predecessors in interest and which Defendants presently contend to be recoupable from royalties otherwise payable to Plaintiffs under the 1986 Great White Agreement have in fact already been fully recouped and/or repaid;

B. Consequently, any purported deficit reflected in current accountings from Defendants to Plaintiffs is false and incorrect, and not in fact owed by Plaintiff;

C. Defendants' Account No. \*\*\*\*6561, propounded to Alan Niven, and alleged by Defendants to be due by both Alan Niven and Heather Niven individually, is baseless, nugatory and is neither recoupable, reimbursable or repayable by either of Plaintiffs;

D. Any past payments made by Defendants or their predecessors to Gunilla Larson Niven had nothing to do with either of Plaintiffs, or with Great White; Plaintiffs and Great White have no obligations to Defendants in respect thereto; and neither all nor any part of said amount is repayable by, reimbursable by, or



1 recoupable from Plaintiffs or Great White.

2 73. On information and belief, Defendants and each of them dispute these contentions  
3 and contend to the contrary.

4 74. Plaintiffs desire a judicial determination of its rights and duties, and those of  
5 Defendants' respectively, and a declaration as to whether Plaintiffs' interpretation of the effect of  
6 the aforesaid agreements and facts, and of the respective rights and obligations of the Plaintiffs and  
7 Defendants, is correct.

8 75. An actual controversy has arisen between the parties, and a judicial declaration or  
9 the respective rights of the parties is necessary and appropriate at this time, so that the rights and  
10 obligations if any of the Plaintiffs and Defendants as between themselves regarding the business  
endeavors identified and described hereinabove, and any contracts alleged, may be ascertained.

#### 11 SEVENTH CLAIM FOR RELIEF

12 (For an Accounting-

13 By Plaintiffs Against All Defendants)

14 76. Plaintiffs reallege and incorporate herein by reference, as if set forth at length, every  
allegation contained in Paragraphs 1 through 31 inclusive, hereinabove.

15 77. A balance is due from Defendants and each of them to Plaintiffs, for nonpayment of  
16 sums due and payable to Plaintiffs under and pursuant to the 1986 Great White Agreement and for  
17 Defendants' misappropriation of profits and gross receipts arising from or attributable to the  
18 distribution, sale and other exploitation of products under and pursuant to that Agreement, and for  
19 the value of all other consideration and benefits received by Defendants because of their wrongful  
conduct herein alleged, which balance can only be ascertained through an accounting.

#### 20 EIGHTH CLAIM FOR RELIEF

21 (For Imposition of a Constructive Trust-

22 By Plaintiffs Against All Defendants)

23 78. Plaintiffs reallege and incorporate herein by reference, as if set forth at length, every  
24 allegation contained in Paragraphs 1 through 31 inclusive, hereinabove.

25 79. As a result and consequence of their conduct alleged above, Defendants and each of  
26 them are involuntary trustees, holding in trust all gross receipts and other valuable consideration  
27 heretofore received or which may be hereafter earned or received by them (including without  
28 limitation all revenues from their licensing, sale and other exploitation of rights and products)  
under, pursuant to or as a result of the performance of the 1986 Great White Agreement; and that  
Defendants hold such moneys and funds on behalf of, and subject to a first and prior lien against

1 all others and in favor of Plaintiffs.

2 80. Plaintiffs are entitled to the remedy of imposition of a constructive trust because of  
3 Defendants' said wrongful conduct.

4 PRAYER

5 WHEREFORE, Plaintiffs ALAN G. NIVEN and HEATHER VINCENT-NIVEN pray for  
6 judgment in their favor and against Defendants and each of them, as follows:

7 On the First Claim for Relief, for the damages suffered by Plaintiffs as a result of the acts  
8 of intentional misrepresentations complained of herein, plus an award of punitive and exemplary  
9 damages against Defendants and each of them in the amount of no less than \$5 million, all  
according to proof, plus interest at the maximum legal rate;

10 On the Second Claim for Relief, for the damages suffered by Plaintiffs as a result of the  
11 acts of concealment complained of herein, plus an award of punitive and exemplary damages  
12 against Defendants and each of them in the amount of no less than \$5 million, all according to  
proof, plus interest at the maximum legal rate;

13 On the Third Claim for Relief, for the damages suffered by Plaintiffs as a result of the acts  
14 of negligent misrepresentation complained of herein, all according to proof, plus interest at the  
15 maximum legal rate;

16 On the Fourth Claim for Relief, for the damages suffered by Plaintiffs as a result of the  
17 acts of breach of written contract complained of herein, all according to proof, plus interest at the  
maximum legal rate;

18 On the Fifth Claim for Relief, for the damages suffered by Plaintiffs as a result of the acts  
19 of conversion complained of herein, plus an award of punitive and exemplary damages against  
20 Defendants and each of them in the amount of no less than \$5 million, all according to proof, plus  
21 interest at the maximum legal rate; and for preliminary and permanent injunctive relief according  
22 to proof;

23 On the Sixth Claim for Relief, for a declaration and judgment that the contentions of  
24 Plaintiffs, as set forth in Paragraph 72 hereinabove, are correct;

25 On the Seventh Claim for Relief, for an accounting to determine the amount due from  
26 Defendants and each of them to Plaintiffs and each of them, for Defendants' misappropriation of  
27 (and failure to timely pay) royalties or other sums due and payable under and pursuant to the 1986  
28 Great White Agreement, and for the value of all other consideration and benefits received by  
Defendants as a result of their wrongful conduct alleged herein;

On the Eighth Claim for Relief, for imposition of a constructive trust, implementing an

1 order of the Court that Defendants and each of them are involuntary trustees, holding in trust all  
2 gross receipts and other valuable consideration heretofore received or which may be hereafter  
3 earned or received by them (including without limitation all revenues from their licensing, sale  
4 and other exploitation of rights and products) under, pursuant to or as a result of the performance  
5 of the 1986 Great White Agreement; and that Defendants hold such moneys and funds on behalf  
6 of, and subject to a first and prior lien against all others and in favor of, Plaintiff;

7 On all Claims for Relief, for Plaintiffs' reasonable attorneys' fees and costs of suit  
8 incurred herein, to the maximum extent permissible by law; and

9 On all Claims for Relief, for such other and further relief in favor of Plaintiffs as the Court  
10 may deem just and proper.

11 Dated: September 21, 2023

**LAW OFFICES OF ALAN G. DOWLING**

12 By: *Alan G. Dowling*

13 Alan G. Dowling  
14 *Attorneys for Plaintiffs* ALAN G. NIVEN and  
15 HEATHER VINCENT-NIVEN  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**REQUEST FOR JURY TRIAL**

Plaintiffs ALAN G. NIVEN and HEATHER VINCENT-NIVEN, and each of them, respectfully request a trial by jury of all claims asserted herein which by law can be tried by a jury.

Dated: September 21, 2023

**LAW OFFICES OF ALAN G. DOWLING**

By: Alan G. Dowling

Alan G. Dowling  
Attorneys for Plaintiffs ALAN G. NIVEN and  
HEATHER VINCENT-NIVEN